MT LEGISLATIVE HISTORY

Chapter 466 1987

Bill H _____ S 380 Original bill & hist. ✓ C

H. Committee on Judiciary S. Committee on Judiciary

Hearing Date(s)	Mar 19	✓ C	Hearing Date(s)	Feb 20	✓ C
	Mar 26	✓ C			C
		C			C
		C			C
Date Out	Mar 26	✓ C		Feb 20	✓ C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

3/26 SIGNED BY SPEAKER

3/26 TRANSMITTED TO GOVERNOR
3/31 SIGNED BY GOVERNOR
CHAPTER NUMBER 301 EFFECTIVE DATE: 10/01/87

SB 380 INTRODUCED BY PINSONEAULT, BROWN, R.
CLARIFY LAW OF PRODUCTS LIABILITY
BY REQUEST OF SENATE JUDICIARY COMMITTEE

2/19	INTRODUCED		
2/19	REFERRED TO JUDICIARY		
2/20	HEARING		
2/20	COMMITTEE REPORT--BILL PASSED		
2/23	2ND READING PASSED AS AMENDED	50	0
2/25	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
3/03	REFERRED TO JUDICIARY		
3/19	HEARING		
3/27	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/28	2ND READING CONCURRED AS AMENDED	75	1
3/30	3RD READING CONCURRED	95	2
	RETURNED TO SENATE WITH AMENDMENTS		
4/03	2ND READING AMENDMENTS CONCURRED	50	0
4/04	3RD READING AMENDMENTS CONCURRED	49	0
4/08	SIGNED BY PRESIDENT		
4/09	SIGNED BY SPEAKER		
4/09	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 466 EFFECTIVE DATE: 10/01/87		

SB 381 INTRODUCED BY SEVERSON, HIMSL, BISHOP, ET AL.
PLACE A CAP ON REAL PROPERTY TAXES EQUIVALENT TO
1.5 PERCENT OF MARKET VALUE

2/19	INTRODUCED		
2/19	REFERRED TO TAXATION		
2/19	FISCAL NOTE REQUESTED		
3/02	FISCAL NOTE RECEIVED		
3/03	HEARING		
	DIED IN COMMITTEE		

SB 382 INTRODUCED BY JERGESON
EXEMPT WATER USERS ENTITIES FROM SPECIAL IMPROVEMENT
ASSESSMENTS

2/19	INTRODUCED		
2/19	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
2/19	FISCAL NOTE REQUESTED		
2/23	HEARING		
2/23	COMMITTEE REPORT--BILL PASSED		
2/24	2ND READING PASSED AS AMENDED	50	0
2/25	3RD READING PASSED	50	0
2/26	FISCAL NOTE RECEIVED		
	TRANSMITTED TO HOUSE		
3/03	REFERRED TO LOCAL GOVERNMENT		
3/09	HEARING		
3/11	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/14	2ND READING CONCURRED	93	3

2

SENATE BILL NO. 380

INTRODUCED BY PINSONEAULT, B. BROWN

BY REQUEST OF THE SENATE JUDICIARY COMMITTEE

IN THE SENATE

FEBRUARY 19, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 20, 1987	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 21, 1987	PRINTING REPORT.
FEBRUARY 23, 1987	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 24, 1987	ENGROSSING REPORT.
FEBRUARY 25, 1987	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 3, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
MARCH 27, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 28, 1987	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 30, 1987	THIRD READING, CONCURRED IN. AYES, 95; NOES, 2.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 3, 1987	RECEIVED FROM HOUSE.
	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 4, 1987	THIRD READING, AMENDMENTS CONCURRED IN.
	SENT TO ENROLLING.

LC 1797/01

Senate BILL NO. 380

INTRODUCED BY Senator Bob Brown

BY REQUEST OF THE SENATE JUDICIARY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE LAW RELATING TO PRODUCTS LIABILITY ACTIONS; DEFINING TWO DEFENSES AVAILABLE IN A PRODUCTS LIABILITY CASE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Strict liability of seller of product for physical harm to user or consumer. (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to his property if:

(a) the seller is engaged in the business of selling such a product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of his product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered or in the exercise of ordinary care should have discovered the defect and was aware or in the exercise of ordinary care should have been aware of the danger and unreasonably made use of the product and was injured by it.

(b) The product was misused by the user or consumer and such misuse caused or contributed to the injury.

(5) The affirmative defenses referred to in subsection (4) mitigate or bar recovery and must be applied in

INTRODUCED BILL
SB-380

1 accordance with the principles of comparative negligence set
2 forth in 27-1-702.

-End-

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325 DAYS: MON THRU FRI TIME: 10:00 A.M.

SECRETARY-MARY HUBER

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0306 MAZUREK, JOSEPH P.	2/06	2/16	REQUIRE PARDONS BOARD TO MEET MONTHLY AT STATE PRISON	DO PASS		2/16
SB0311 HOFMAN, SAM	2/10	2/16	LIMIT CHALLENGES TO LOCAL INITIATIVES	TABLED	Tabled 2/18	—
SB0338 BOYLAN, PAUL F.	2/14	2/17	REGULATE TESTS OF BLOOD AND URINE OF EMPLOYEES AND PROSPECTIVE EMPLOYEES	PASS AS AMENDED		2/20
SB0356 KOLSTAD, ALLEN C.	2/17	2/19	ESTABLISH MINIMUM OFFICEHOLDING AND TRAINING REQUIREMENTS FOR CORONERS	PASS AS AMENDED		2/19
SB0361 HALLIGAN, MIKE	2/18	2/19	REVISE YOUTH COURT ACT	PASS AS AMENDED		2/20
SB0363 JACOBSON, JUDY H.	2/18	2/20	SET MINIMUM GARNISHABLE AMOUNT UNDER CHILD SUPPORT INCOME DEDUCTION ACT	PASS AS AMENDED		2/20
SB0375 BISHOP, AL	2/18	2/20	REVISE WRONGFUL DEATH ACTIONS	PASS AS AMENDED		2/20
SB0379 YELLOWTAIL JR, WILLIAM P.	2/19	2/20	ALLOW IRRIGATION DISTRICTS TO CONTRACT WITH THE STATE FOR A LOAN OF MONEY	PASS AS AMENDED		2/20
SB0380 PINSONEAULT,R.J.(DICK)	2/19	2/20	CLARIFY LAW OF PRODUCTS LIABILITY	DO PASS		2/20

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 20, 1987

The Senate Judiciary Committee met at 7:00 a.m. on February 20, 1987 in Room 415 to work strictly on Executive Action before their 10:00 a.m. meeting.

ROLL CALL: All present, except for Senator Halligan who came late.

ACTION ON SB 338: Valencia Lane and John Fitzpatrick worked on amendments for this bill (see Exhibit 1). Mr. Fitzpatrick felt these amendments will get rid of 95 percent of the problems in drug testing employees on both sides. He said the fairness comes within the amendments where it states an employee can get a second drug test and the employer will pay for it.

Bill Leaphart, representing himself, commmented there should be a stronger provision on the evidence needed to make an employee take the test. He suggested a subjective test, because an employer just thinking an employee is taking drugs will not hold up in court. Mr. Leaphart said making a person take a drug test without good probable cause, violates the person privacy rights.

Senator Bishop asked if this bill is a condition to employ someone, or for someone that is working right now. Senator Bishop felt the committee should make it definite in the bill if it is a condition for employment or not. Mr. Leaphart thought so too. Senator Mazurek felt the bill should list jobs that would be most highly vulnerable to drug users. He said security jobs should have drug testing before a person is employed. Mr. Fitzpatrick said that would be fine to put in security jobs has mandatory drug testing. Senator Beck felt jobs that are somewhat hazardous to someone should have drug testing too before employment, because someone on drugs could hurt a fellow employee at the workplace. Senator Mazurek said right now the committee sounds like they want some drug testing done before employment and have a subjective test after employment has been established. Senator Mazurek said the problem with drug testing before getting a job is if the test is not accurate and someone is tested positive, the guy probably will not hire that person even if a second test is negative because the employer will want to play it safe. Senator Mazurek said a medicine used for some physical or mental condition could make someone test positive for an illegal drug and that excuse for testing positive still might not work on an employer who is hiring.

Senator Brown moved the technical amendments. The motion CARRIED with Senators Halligan, Yellowtail, and Blaylock voting no.

come out of the Water Development Fund, which is in the Coal Tax money.

Senator Galt asked why the fund that this money would be taken from was not specified in the bill. Mr. Schofield said that is correct; it should be specified. Mr. Schofield said he would work on that in the back of the room.

Senator Yellowtail closed.

CONSIDERATION OF SB 380: Senator Pinsoneault of St. Ignatius introduced SB 380, which clarifies the law relating to products liability actions; defining two defenses available in a products liability case. He explained this was a Judiciary Committee bill request.

PROPONENTS: Keith Keller, Montana Association of Defense Counsel, said the most importanat change is to permit the assurtion of defenses associated with users of the product. He said the only defense based on the product user conduct is subjective assumption of the risk. He said this bill will substitute for that subjective standard. He said misuse of the product is used as a defense in this bill and he said the idea of comparative fault with product liability has become law in other states.

Jim Robischon, Montana Liability Coalition, supported the bill.

OPPONENTS: Karl Englund, Montana Trial Lawyers Association, commented that he is concerned about the assumption of the risk. He stated that in the assumption of the risk, if the defect was an obvious danger, then one could say the consumer should obviously be aware of the obvious danger. He felt a misuse of a product is subpart of the assumption of the risk.

John Hoyt, Great Falls, thought on page 2, line 17, insert "(a) the user of the product discovered the defect or the defect was obvious and the user should of been aware of the danger". He said it becomes an objective point of view this way.

DISCUSSION ON SB 380: Senator Pinsoneault asked Mr. Keller is he agreed with Karl Englund's and John Hoyt's purposal. Mr. Keller said it changes the bill drastically, so he did not agree with their purposal.

The committee adjourned for executive action.

ACTION ON SB 338: Valencia presented amendments to the bill from the 7:00 a.m. meeting, which were revised (see Exhibit 6). Senator Yellowtail moved to strike all amendments that were passed in this bill and start with the original bill. The motion CARRIED. Senator Bishop moved the revised amendments. The motion CARRIED. Senator Yellowtail moved the bill DO PASS AS AMENDED. The motion CARRIED.

say where the funding will come from. Senator Galt moved the amendments. The motion CARRIED. Senator Yellowtail moved the bill DO PASS AS AMENDED. The motion CARRIED.

ACTION ON SB 380: Senator Crippen moved the bill DO PASS. Senator Yellowtail made a substitute motion to adopt Karl Englund's and John Hoyt's language that he presented during the meeting. Karl stated that misuse of a product has become a defense in this bill and it never was before. The amendment and substitute motion FAILED. The motion to pass the bill CARRIED.

The committee adjourned at 12:00 p.m.

Joseph P. Mazurek
Chairman

ROLL CALL

Judiciary COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date Feb. 20th 10:00 am

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman	X		
Senator Bruce Crippen, Vice Chairman	X		
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blavlock	X		
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date Feb. 20 1987 Bill No. SB 380 Time 12:05

NAME	YES	NO
Senator Joe Mazurek, Chairman		X
Senator Bruce Crippen, Vice Chairman		X
*Senator Tom Beck		X
Senator Al Bishop	X	
Senator Chet Blaylock		
Senator Bob Brown		X
Senator Jack Galt		X
Senator Mike Halligan	X	
Senator Dick Pinsoneault		X
Senator Bill Yellowtail	X	

Secretary Chairman

Motion: Amendments on SB 380

7

12

DATE FEB. 20

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check Support	Check Opp
Sue Weingartner	MT Assoc Def Counsel	380 375	✓	
K. M. Kelly	MWDA & Mt. Irrigators	SB 379	✓	
[illegible]	MWDA	SB 379	✓	
[illegible]	HELENA VALLEY IRR DIST	SB 379	✓	
Roger McGlenn	INDEPENDENT INSURANCE AGENTS ASSOC. OF MT	SB 380	✓	

(Please leave prepared statement with Secretary)

13

STANDING COMMITTEE REPORT

February 20 87
19

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration SENATE BILL No. 380

first reading copy (white)
color

~~Clarifying law of products liability~~

Clarify law of products liability.

Respectfully report as follows: That ~~XXX~~ SENATE BILL No. 380

DO PASS

~~DO NOT PASS~~

Senator Hazurek Chairman.

CS-32
1985

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY COMMITTEE

SENATE BILL NUMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CON-CURRED IN DATE	BE CON-CURRED IN AMENDED DATE	BE NO CONCUR IN A AMEND DATE
258		3/16/87						3/23/87			
261		3/17/87								3/18/87	
275		3/17/87								3/27/87	
286		3/19/87								3/27/87	
289		3/17/87						3/23/87			
303		3/17/87								3/25/87	
306		3/17/87						3/17/87			
338		3/18/87								3/24/87	
361		3/18/87								3/23/87	
363		3/18/87								3/27/87	
372		3/19/87									3/27/8
375		3/19/87								3/26/87	
380		3/19/87								3/26/87	

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

March 19, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on March 19, 1987, at 8:00 a.m. in Room 312D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Addy who was excused.

EXECUTIVE SESSION:

ACTION OF SENATE BILL NO. 49:

Rep. Brown moved that SB #49 Be Concurred In. Rep. Cobb moved the subcommittee amendments. Rep. Rapp-Svrcek pointed out that the amendments were not unanimously passed by the subcommittee. Rep. Gould asked Rep. Cobb what can be done about people who are not 501 (c) tax status. Rep. Cobb stated that if those people are to be protected, amendment number 3 must be stricken, and they must file as a nonprofit organization with the state to be exempted. Rep. Gould acknowledged that he would like to segregate amendment number 3. Rep. Cobb pointed out that amendments number 1, 2, and 4 could be voted on and he moved those. Question was called and a voice vote was taken. The motion CARRIED 15-1 with Rep. Rapp-Svrcek dissenting. Rep. Brown moved that SB #49, Be Concurred In As Amended. Rep. Rapp-Svrcek moved amendment number 3, because he stated that it is an important amendment. (See Subcommittee Amendment No. 3 Attached-Exhibit A). Rep. Giacometto opposed the amendment because he pointed out that the people who fall under the Montana Corporation Act are the same people who fall under the 501 (c) and just have not filed. Rep. Miles explained that the filing of 501 (c) is not a problem to do and any nonprofit corporation should be doing this filing. She stated that those who do not file under the Montana NonProfit Corporation Act can cause a potential for abuse and this is in keeping with this act. We want to exempt officers and directors of nonprofit corporations. Rep. Giacometto stated that Montana does have a law and a standard, to clarify what a nonprofit corporation is and if it is regulated properly it will work. Question was called and a voice vote was taken. The motion FAILED 13-3. Amendment number 3 has been stricken. Rep. Mercer moved that §3 be stricken in its entirety. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Question was called on the bill to Be

ation is going to be whether the camping is a necessity. The outfitter cannot set up a base camp just because he chooses to do so. The outfitter must have a need to camp, he said. Rep. Cobb asked Mr. Ross if the petition access that he stated is working so well should be narrowed down. Mr. Ross said that the petition is set up to protect the landowners interest, fishermen's interest and the resources.

Rep. Keller asked Mr. Ross how many petitions have been processed. Mr. Ross stated that he can not answer that question right off the top of his head.

Rep. Miles asked Mr. Flynn if there were many complaints received during the last two years regarding camping. He stated that the Department has received 245 total and there were 76 citations issued, which deal with stream access trespassing, bird hunting and big game hunting trespassing.

Senator Galt closed the hearing on SB 286 by stating that the yellow and gray copies are his proposed amendments to the blue copy bill. He stated that the amendments proposed do conform to the Supreme Court decision and recognizes an important point, private property. He explained that these amendments are addressed to the small streams and not the class one waters.

SENATE BILL NO. 380, Senator Pinsoneault, District No. 27, stated that this is an act clarifying the law relating to the products liability area. It defines two defenses available in a products liability case and provides an immediate effective date. This bill provides guidance for District Court judges that try cases and clarification for jury instructions. In a civil case the bottom line is, how are instructions to the jury couched.

PROPONENTS:

JACQUELINE TERRELL, Montana Association of Defense Counsel, and she is speaking on behalf of John Stevenson. She stated that an amendment will be offered by the American Insurance Association and it is supported by the Counsel. She acknowledged that this is a good bill.

Glen Drake, American Insurance Association, stated that they support the intent and concept of this bill as originally drafted. On second reading, this bill was amended in such a way that we now believe it nullifies one of the intended defenses to a products liability action. He submitted written testimony and an amendment. (Exhibit A).

Jim Robischon, Montana Liability Coalition, supported SB #380 with the proposed amendments of Mr. Drake.

Karl England, Montana Trial Lawyers Association, stated that they have lukewarm support for this bill. SB #308 has an objective assumption of risk and there must be a middle ground. Montana has never used the objective assumption of risk.

There were no opponents and no questions.

Senator Pinsoneault closed the hearing on SB 308 stating that the bill is a step in the right direction and he explained that the amendment is left to the committee's good judgment.

SENATE BILL NO. 372, Senator Pinsoneault, District No. 27, explained that this is an act revising the dispute settlement procedures involving new motor vehicle warranties. It provides for notice to the dealer as an agent of the manufacturer, imposing an obligation of good faith and increasing penalties for violations. He stated that if the consumer wants arbitration this bill gives flexibility.

PROPONENTS:

John Motl, Attorney, Helena, stated that half of his practice consists of representation of consumers on automobile warranty cases, new cars and used cars. The lemon law has been used by him as much as any attorney can in the state of Montana. He stated that he sees this act as an improvement in Montana's existing lemon law and an important addition to this bill is that it attempts to give the consumer a copy of the warranty repair work. He further emphasized that on behalf of the consumer, pass this bill.

OPPONENTS:

N. R. SHERBERT, General Motors Corporation, pointed out that GMC works with the Better Business Bureau for an arbitration system. He stated that he has mixed emotions on this bill because there are some areas of it that are an improvement to the existing code. He pointed out also that GMC feels it is an obligation of the consumer to have some liability in this program, the responsibility of the consumer should not be eliminated. The consumer must notify the manufacturer that he has a problem with his vehicle. The suggestion that the consumer should get a work order from the dealer, and therefore the manufacturer will be notified that is not something that will happen. He highly recommended that the

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 19, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)		✓	✓
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

CS-30

A
3-19-87
SB # 380

WRITTEN TESTIMONY
OF AMERICAN INSURANCE ASSOCIATION
OF
SB 380

We strongly support the intent and concept of this bill as originally drafted. On second reading, however, this bill was amended in such a way that we now believe it nullifies one of the intended defenses to a products liability action.

Specifically, the misuse defense was amended to provide that misuse may be a defense only when the consumer unforeseeably misuses the product. In effect, this amendment creates a means of holding a product manufacturer liable in any case in which he could have foreseen misuse. Any product, however, can be misused and that always can be foreseen in some scenario.

For example, a gun, no matter how safely or perfectly manufactured, can be misused and that misuse is foreseeable. Because of that foreseeable misuse, that gun manufacturer could be liable for a product defect when none was present.

Therefore, we request that the third reading (blue) copy of the bill be amended as follows:

1. Page 2, line 22
Following: "was"
Strike: "UNFORESEEABLY"

VISITORS' REGISTER

BEST COPY AVAILABLE

_____ COMMITTEE

BILL NO. 380 DATE March 19, 1987

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
[illegible]	[illegible]	✓	
[illegible]	[illegible]	✓	
[illegible]	[illegible]	✓	
[illegible]	[illegible]	✓	
[illegible]	[illegible]	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

March 26,1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on March 26, 1987, at 9:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Cobb who was excused.

EXECUTIVE ACTION:

ACTION ON SENATE BILL NO. 229:

Rep. Miles moved that SB 229 be taken off the table and reconsidered. She stated she supported a motion to discuss the bill because SRS was not being properly funded. There are people who need to be placed in services for the developmentally disabled and she felt a little more time was needed on the bill in discussion. Rep. Mercer asked Rep. Miles if she had changed her vote or did she want to just discuss the bill. She stated that she votes to move the bill out of committee. Question was called and a voice vote was taken. The motion CARRIED 10-7. Rep. Rapp-Svrcek moved SB 229, BE CONCURRED IN. He stated he felt that discussion was needed so the system was not abused especially for people who have been on the waiting list for a time. Rep. Addy explained that he opposed the bill because it was the executive branch coming to the legislative branch and asking them to tell the judicial branch they could no longer interfere in the actions of the executive branch even though the legal rights of the individuals who are involved in executive branch actions are directly effected. That is a violation and separation of powers and it is a usurpation of power by this branch and a perversion of what the total system of government was suppose to be by the executive branch. Rep. Rapp-Svrcek asked Rep. Addy what about the rights of the people who were waiting to be placed that were being used up by those who could afford to go into court and press their cases. Rep. Addy stated that was the opposite of what they had in the bill. SB 229 has the legislature stepping in where they should not. He also stated that SRS should be adequately funded so there were placements for DD people. The judicial branch must place an individual where they felt his rights are protected. Rep. Gould explained that SRS was doing a good job and SB 229 was an important bill. He stated Montana is a model state and SRS is doing a

the word "department" to page 6, on line 5. A voice vote was taken and the motion CARRIED unanimously. Discussion continued with Rep. Mercer stating that this was a bill dealing with snowmobilers. Anytime the department is operating property under an agreement, then they are not making any guarantees that it is safe except to the extent of gross negligence. He stated he felt this was beyond the title of the bill. Rep. Mercer moved to amend page 6, line 2, inserting snowmobiling. (See amendments attached). Rep. Giacometto asked that clarification be made in regard to other outdoor activities. Rep. Mercer stated it is his understanding that if they own the land or lease the land, they are already covered. If they enter into an agreement to take care of the land which is not really a lease, then, they also want the comfort of this protection. This bill is an act to affect snowmobilers and does not have anything to do with other activities and there are other people who might have other concerns and that bothered him. Rep. Addy favored the motion. When there is a problem with the title being beyond the scope of the title, it is better to narrow the scope of the bill than to expand it, he said. Question was called and a voice vote was taken. The motion CARRIED unanimously. Rep. Grady moved that SB 139 BE CONCURRED IN AS AMENDED. Question was called on the bill. A voice vote was taken and the motion CARRIED unanimously. SB 139 BE CONCURRED IN AS AMENDED.

ACTION ON SENATE BILL NO. 375: Rep. Addy moved the amendments of the subcommittee, on page 5, lines 3 and 4. (See amendments attached). Rep. Addy moved that SB 375 BE CONCURRED IN AS AMENDED. Rep. Gould asked Rep. Addy what exactly is happening on this. Rep. Addy asked Mr. Karl England to explain wrongful death. He explained that currently, when there is a death and a tort case, there is a possibility of bringing two cases to court, but in separate cases. One for the wrongful death of the person and one on behalf of the survivor of the person, and, there is a possibility of at least one area of damages where you can collect damages for the same thing in both cases. This bill says, when there is a death, the two cases have to be combined and you can only collect each measure of damages possible. Rep. Eudaily questioned Rep. Addy about taking the word "immediate" out of the title. Rep. Addy stated that was exactly correct. Rep. Addy also moved that amendment. Question was called and a voice vote was taken. The motion CARRIED unanimously. SB 375 BE CONCURRED IN AS AMENDED.

ACTION ON SENATE BILL NO. 380: Rep. Addy moved the amendments of the subcommittee. He explained the amendments stating that the amendments go from an implied negligence theory to an actual notice theory. (See amendments

attached). Rep. Hannah agreed with the amendments. Question was called and a voice vote was taken. The motion CARRIED unanimously. Rep. Addy moved that SB #380 BE CONCURRED IN AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED unanimously. SB 380, BE CONCURRED IN AS AMENDED.

ACTION OF HOUSE BILL NO. 873: Rep. Hannah moved that HB 873 BE CONCURRED IN. Question was called and a voice vote was taken. The motion CARRIED 12-2 with Reps. Miles and Meyers dissenting. HB 873, BE CONCURRED IN.

ACTION ON SENATE BILL NO. 77: Rep. Giacometto moved that SB 77 BE CONCURRED IN. Question was called and a voice vote was taken. The motion CARRIED 9-5 with Reps. Miles, Bulger, Rapp-Svrcek, Addy and Darko dissenting. SB 77 BE CONCURRED IN.

ADJOURNMENT: There being no further business to come before the committee, the hearing was adjourned at 10:34 a.m.

Earl Lory

EARL LORY, Chairman

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 26, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)			✓
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

CS-30

HOUSE

MARCH 26, 1987

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. 380

☐ do pass
☐ do not pass

XX be concurred in
☐ be not concurred in

XX as amended
☐ statement of intent attached

Earl Lory
Chairman

1. Title, line 6.
Strike: ";"
Insert: "AND"

2. Title, lines 7 and 8.
Strike: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 2, line 5.
Following: line 4
Insert: "(4) The requirement in subsection (2)(b) that the product is expected to and does reach the user or consumer without substantial change in the condition in which the product is sold does not apply to an action based upon improper product design."

Renumber: subsequent subsections

4. Page 2, lines 17 and 18.
Strike: "or in the exercise of ordinary care should have discovered"

5. Page 2, lines 19 and 20.
Strike: "and was aware or in the exercise of ordinary care should have been aware of the danger"
Insert: "or the defect was open and obvious"

6. Page 2, line 20.
Following: "and"
Insert: "the user or consumer"

7. Page 2, line 22.
Strike: "UNFORESEEABLY"
Insert: "unreasonably"

8. Page 3, line 1.
Strike: "(4)"
Insert: "(5)"

THIRD reading copy (BLUE color) REP. ADDY WILL CARRY THE BILL!

COMMITTEE OF THE WHOLE AMENDMENT

HOUSE

3-28-87
DATE

19:40
TIME

MR. CHAIRMAN: I MOVE TO AMEND SB 380

3rd reading copy (blue) as follows:
Color

AMENDING THE HOUSE JUDICIARY STANDING COMMITTEE REPORT
DATED 3-26-87, WHICH AMENDED SB 380

1) Amending Instruction No. 3, line 3 (the inserted material).
Following: "(4)"
Strike: "The requirement in" through "design" (all of the subsection)
Insert: "Subsection 2 (b) does not apply to a claim for relief based upon improper product design"

ADOPT

REJECT

Ramirez
Rep. Ramirez

27

SENATE BILL NO. 380

INTRODUCED BY PINSONEAULT, B. BROWN

BY REQUEST OF THE SENATE JUDICIARY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE LAW RELATING TO PRODUCTS LIABILITY ACTIONS; AND DEFINING TWO DEFENSES AVAILABLE IN A PRODUCTS LIABILITY CASE;~~---AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Strict liability of seller of product for physical harm to user or consumer. (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to his property if:

(a) the seller is engaged in the business of selling such a product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of his product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) ~~THE REQUIREMENT IN SUBSECTION (2)(B) THAT THE PRODUCT IS EXPECTED TO AND DOES REACH THE USER OR CONSUMER WITHOUT SUBSTANTIAL CHANGE IN THE CONDITION IN WHICH THE PRODUCT IS SOLD DOES NOT APPLY TO AN ACTION BASED UPON IMPROPER PRODUCT DESIGN~~ SUBSECTION (2)(B) DOES NOT APPLY TO A CLAIM FOR RELIEF BASED UPON IMPROPER PRODUCT DESIGN.

~~(4)~~(5) Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered ~~or in the exercise of ordinary care should have discovered~~ the defect ~~and was aware or in the exercise of ordinary care~~

REFERENCE BILL

1 ~~should have been aware of the danger~~ OR THE DEFECT WAS OPEN
2 AND OBVIOUS and THE USER OR CONSUMER unreasonably made use
3 of the product and was injured by it.
4 (b) The product was ~~UNFORESEEABLY~~ UNREASONABLY misused
5 by the user or consumer and such misuse caused or
6 contributed to the injury.
7 ~~(5)~~(6) The affirmative defenses referred to in
8 subsection ~~(4)~~ (5) mitigate or bar recovery and must be
9 applied in accordance with the principles of comparative
10 negligence set forth in 27-1-702.

-End-